

New York Financial Writers Association
Prepared Remarks of U.S. Attorney Preet Bharara
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Let me begin by spending a few minutes describing my office and its mission. Some of you here cover us every day and so you know much of this, but since most of you are not part of the courthouse crowd and I have you captive, it is worth my while – and hopefully yours – for me to explain a bit about us and how we do business – about our organization, our ethic, and our approach.

The more than 230 AUSA's in my Office handle the most diverse and high-profile docket in the country. And while we have in recent times successfully pursued substantial insider trading cases, it is far from the only thing we do; and it is not the most important thing we do. Our first priority – especially since 9/11 – is of course, protecting Americans from the threat of terrorism, whether homegrown or foreign-based. And so, since I took office in August 2009, we have continued to work tirelessly not only to keep our markets fair, but also to keep our homeland secure, our streets safe, and our government honest.

While we have charged almost 50 defendants with insider trading alone in the 20 months since Raj Rajaratnam was arrested, we have been just as busy charging more than 2,000 other defendants and enforcing all the other laws in our mandate.

In those 20 months, we have, among many other things:

- Sent Faisal Shahzad, the Times Square bomber, to prison, for life;
- Sent Ahmed Ghailani, a mass murderer of innocents in Africa, to prison, for life;
- Convicted four men of plotting to blow up a synagogue, in Riverdale;
- Convicted Afia Siddiqui of attempting to kill American servicemen, in Afghanistan;
- Charged two Brooklyn men with providing material support to al Qaeda;
- Charged three men with narco-terrorism in connection with al Qaeda in the Islamic Maghreb;
- Convicted the first pirate in modern times, rounded up a ring of Russian spies, and prepared the indictment of Khalid Sheik Mohammad and four others for the attacks of 9/11, though that plan changed.
- Also in the last 20 months, we have been more aggressive and active on corruption in Albany than any other prosecutor's office in New York – current and former elected state officials we have charged recently include Senator Vincent Leibell, Senator Hiram Monserrate, Senator Carl Kruger, and Assemblyman William Boyland.

- In addition, we brought corruption charges against New York City Councilman Larry Seabrook and Yonkers City Councilwoman Sandy Annabi;
- We arrested a group of people in connection with the still-developing \$700 million CityTime payroll scandal;
- We participated in one of the largest organized crime takedowns in history;
- We charged the largest Medicare fraud perpetrated by a single criminal organization in history;
- We conducted the largest criminal sweep of gangs in Newburgh, New York, in history – a place where children are literally dying in the streets because of the scourge of the Bloods and Latin Kings;
- We extradited one of the most notorious alleged arms traffickers in the world, Viktor Bout of Russia, and one of the most prolific alleged narcotics traffickers in this hemisphere, Christopher Coke of Jamaica;
- We obtained the conviction of top Democratic fundraiser, Hassan Nemazee;
 - the conviction of former Police Commissioner, Bernard Kerik;
 - the conviction of celebrity investment adviser, Kenneth Starr;
 - the conviction of Park Avenue Bank President, Charles Antonucci;
 - the conviction of former Duane Reade CEO, Anthony Cuti; and,
 - the conviction of former BDO Seidman CEO, Dennis Field, and three others in a seven-billion tax shelter fraud;
- We charged a long-running and massive \$42 million fraud on the Holocaust victims' claims fund;
- Secured a \$554 million settlement for fraudulent tax shelters by Deutsche Bank;
- Charged seven Americans with hiding over \$100 million in secret Swiss bank accounts at UBS to avoid paying taxes;
- Charged a total of 105 individuals with mortgage fraud;
- And, we brought the most sweeping Justice Department lawsuit to date over reckless lending practices by a major financial institution, Deutsche Bank;
- We achieved, together with the Madoff Trustee, the largest forfeiture in U.S. history – a \$7.2 billion settlement with the estate of Jeffrey Picower – \$2.2 billion of which is a direct result of my Office's efforts.

And by the way, even completely setting aside the Picower forfeiture, in the fiscal year to date, our Office has forfeited or reached agreements to forfeit more than \$642 million, more than half of the total across the entire Department of Justice. With an annual budget of approximately \$50 million, this means that right now our Office has already recovered more than 12 times the amount of money it is spending. It might be of interest to a roomful of financial writers that this Office delivers such a return on taxpayers' investment. Better than some hedge funds, if I'm not mistaken.

And all this is just what is public; necessarily invisible are all the ongoing investigations and inquiries that are churning away in every area – public corruption, terrorism, drugs, organized crime, and securities fraud.

A recitation of significant cases we've brought in the last 20 months doesn't, of course, really explain how we go about our work. So let me say a few things about what I expect from the AUSA's in my office, about our first principles.

First and foremost, what I expect every day from every Assistant in my office is the wise and just exercise of discretion and judgment. I expect the AUSA's in my office to be open-minded, fair, and supremely principled in how charging decisions are made and how dispositions are handled. In everything we do, the public should expect us to remember always that our goal is not to win, but to do the right thing, for the right reasons, in the right way. In a word, to do justice.

Now let me mention three more specific things about our Office's culture and tradition, which may inform how you think about and cover our Office. First, we espouse an ethic of fearlessness. If we have the law and the facts on our side, we are intimidated by no one, and we discharge our duties, as our oath provides, "without fear or favor."

We believe that no one is above the law, no matter who you are or how much money you have – we are, and have always been, prepared to pursue anyone who has clearly broken the law; and it doesn't matter whether it is al Qaeda or al Shabab; the Gambino crime family or the Sinaloa cartel; whether it is a state senator or a member of Congress. And the same is true for any financial institution, no matter how large or how lucrative. If you have broken the law and we believe we can prove it to a unanimous jury beyond a reasonable doubt, we will bring the case. But if we cannot, we will walk away.

Our ethic means also that we are not afraid of taking on tough cases; we are not afraid of losing; and we are not afraid of criticism. No office has a 100 percent conviction rate – if it did, one would rightly wonder whether that office was pulling punches, playing it safe, and taking sufficiently seriously its duty to aggressively protect the public. So, when we bring any particular case, it is because in the considered judgment of experienced career prosecutors, the proof was there and justice demanded it. And the reverse is also true – if at the end of the day, we do not bring any particular case, it is because the evidence simply was not there and/or justice counseled against it.

Second, we have a proud tradition of independence. Many of you know that, because of our long tradition of fierce independence, we are sometimes jokingly referred to as the Sovereign District of New York. But separate and apart from any supposed sovereignty, independence means

acting always without regard to political winds or public pressure. It means acting only on the basis of the law, the facts, and the demands of justice. In my view, that kind of independence is just as important to the fair administration of justice as a badge or a law degree.

I took an oath when I became the U.S. Attorney, an oath that I believe obligates me – as I said the day I was sworn in – to find not only “the independence to banish politics from all deliberation and decision-making,” but also “the courage to resist even overwhelming public pressure to do the wrong or incorrect thing.” Political calculation and public pressure can never trump our dedication to the law and the facts. The day that happens to a prosecutor is the day that prosecutor should resign.

So, no matter what we do and what care we take, there will inevitably be some who say we’re too tough; and others who say we’re not tough enough. Part of my task is to ignore all of that noise and just do my job – enforcing the laws as they were enacted.

Third, we believe in tough but fair enforcement. We are extremely sensitive to the collateral damage that can befall the innocent when we undertake any investigation. And we are sensitive also to the delicate nature, and special circumstances, of investigations into financial institutions and businesses. We have to be. So, we spend a lot of time discussing in our office the right way to proceed in white collar investigations, given the existence sometimes of thousands of vulnerable and innocent employees and shareholders – who are so often left holding the bag when things go south.

But, that said, while we are sensitive to collateral consequences and do not ever want to inflict undue harm during a legitimate investigation, no one should expect immunity from inquiry, because no one is above the law. When there is smoke, especially lots of smoke, fire fighters tend to show up at the scene, and they investigate. It would in fact be irresponsible if fire fighters were not dispatched. The same is true of us.

If we have reason to believe that there is substantial evidence of criminality; if we have reason to believe that evidence might be destroyed; if we have reason to believe that we are being stymied in our investigation, we will take whatever steps are necessary in the interests of justice, some of which will necessarily be painful for the institution in question. And if an institution is so fragile that the mere issuance of a subpoena or performance of a court-authorized search might destroy the entire business, then it is incumbent on that business to be even more careful and more scrupulous than everyone else. That is common sense and smart business practice.

And let me say this also: in my view, we should not be telling any institution that it is too big to be prosecuted. No one should receive a get-out-of-jail-free card based on size. There may be, at the end of the day, extremely compelling reasons why for the sake of innocent third parties a disposition short of a criminal charge is appropriate in some particular case, but there should never be a presumption of immunity based on size. That is a dangerous thing.

The financial system that you all write about still arguably allows too much passing of the buck. We should not be adding a presumption of prosecutorial immunity to the mix of moral hazards.

Now, let me mention two additional practical realities that inform how we have to do our jobs, particularly in the white collar context – the nature and pace of complex criminal investigations and the necessary secrecy of those investigations.

First, the nature of complex inquiries. Many investigations take time. Complex financial investigations, in particular, can seem slow. That is because we are painstaking, methodical, and exacting. We don't shoot from the hip. I hope you agree that this is, generally, a good thing.

But prolonged investigations, particularly ones that become publicly known or suspected, inevitably provoke grumbling. That is not at all surprising. Companies want repose, victims want justice, and the public wants accountability. And you all want news. But complex and significant financial cases do not always get made overnight. Charging decisions can't always be made days or weeks after a subpoena is served or a search warrant is executed. Complex financial investigations require that quality ever in short supply: patience.

Galleon is a good case in point. That case – which began long before I got to the Office and before the meltdown, by the way – took more than four years from commencement of the criminal investigation to verdict against Rajaratnam. And offshoots of that case are going on still, of course.

Part of the reason we have to take such painstaking care is that the burden of proof in a criminal case is so high. It is not just a little bit higher than in a civil case. It is a lot higher. And, when a person's liberty is at stake, that is as it should be.

In a fraud case, we have to show what was in the defendant's mind – we have to find criminal intent and proof of that intent beyond a reasonable doubt. Most typically, that is through some direct proof that the defendant knew that he was breaking the law. That is why you see certain facts figuring so prominently in many of our insider trading investigations.

As I said a few months ago when I announced several arrests: generally speaking, when people frantically begin shredding sensitive documents and deleting computer files and smashing flash drives and chasing garbage trucks at 2 o'clock in the morning, it is not because they have been operating legitimately; it is because they have broken the law, they know it, and they don't want to get caught. But that is the kind of proof we often have to bring to bear in a criminal case.

If there were no difference between the stakes and standards for a criminal versus a civil case, then every insider trading charge brought by the SEC would result in a parallel criminal action. But that does not happen. If there were no difference in the standard, then every single time anyone – including the good people in this room – took an unjustifiable or wrong deduction on a tax return, you could be indicted. It doesn't work that way, nor should it.

Second, the secrecy of federal investigations. This can be frustrating for the press, but secrecy is a necessary corollary to most federal criminal investigations. And we do not confirm or deny the existence of investigations, and we don't announce subpoenas.

Why? First, there are grand jury secrecy rules and codes of professional responsibility for lawyers generally, and for Justice Department lawyers specifically. So, in some instances, if my Office reveals something not in the public record, it could be a basis for disciplinary action, or worse, a criminal act. And there is always the concern about preserving a defendant's right to a fair trial and protecting the reputations of innocent people.

Second, secrecy aids our ability to conduct an investigation with maximum efficacy and thoroughness. When people don't know there is an investigation or at least its precise status and

contours, they are less likely to flee; less likely to hide or dissipate assets; less likely to destroy evidence or otherwise obstruct justice. These are things that we prefer not to happen.

Now, before I move on to some observations about insider trading and corporate culture, let me anticipate a question that I get lately wherever I go and that I know I will get this evening.

The question is: why are there not more criminal prosecutions of executives whose conduct is speculated to have directly contributed to the financial crisis?

To be sure, as we have in the Southern District, the entire Department of Justice has aggressively investigated and prosecuted mortgage fraud of all stripes, including more than 1,200 defendants in this past year alone. And trial attorneys from the Department of Justice, along with prosecutors from the Eastern District of Virginia, recently convicted Lee Farkas and several of his co-conspirators for one of the largest bank fraud schemes in history that contributed to the failure of Colonial Bank and TRW.

But the question of why not more is still asked, and it is a legitimate and serious question. In fact, members of my own family have asked me that question.

Now, this is important to understand: Before I am a prosecutor, I am a citizen and a taxpayer and I want – as much as anyone – people to be held accountable for any misconduct that contributed to the crisis that my family has had to endure just like everyone else's. And I can assure you this: the number of prosecutions is not a function of resources, effort, commitment, or courage. It is, rather, a matter of the law, the facts, and the painstaking nature of these investigations.

You should know that in my Office – as well as at many U.S. Attorney's Offices around the country and at Main Justice and at the SEC – tremendous resources have been devoted to following every lead and pursuing every angle to hold people accountable for any illegal conduct. That commitment and process began long before I became the U.S. Attorney, and it continues to this day. Witnesses have been interviewed, documents subpoenaed, analyses run, emails reviewed, legal theories researched. And this, as I've said, continues.

Much of that is invisible to the public because, unlike commissions and Congressional committees, we do not make our efforts public unless and until we bring a charge. And we, of course, have to dig much deeper. But our inability to talk about specifics should never be interpreted as inaction or apathy.

In my Office, when we see so much as a wire story about a small company suddenly restating its financials, and when otherwise warranted, we jump on it; so you can be sure my folks and others in the Department have been all over every public allegation of malfeasance relating to the financial crisis and scores more that are not public. No resource has been spared.

The first goal, naturally, is to exhaust every criminal angle. And then, if there is particular misconduct for which individuals and institutions cannot be held accountable criminally for any reason, we will apply our civil tools as appropriate. That is one of the reasons – even during the continuing government budget crisis and hiring freeze – that I substantially built up our anti-fraud capability in the civil division and created, for the first time in its history, a dedicated Civil Frauds Unit to make maximum use of our civil tools in the financial fraud area.

The bottom line is this: we too want to hold accountable anyone who deserves to be punished for complicity in the worst economic crisis since the Great Depression. Any case we make, however, will be because it is appropriate and deserved, not because there is overwhelming public pressure to do so.

Now, let me say a few words about insider trading, which as I explained, is just a small part of what we do, notwithstanding the outsized attention it receives. The impressive results you have seen over the past 20 months are the result of the work done by just a handful of AUSA's in my Office, working with the FBI and SEC.

Here are a few observations from the last 20 months' experience:

First, it should be clear by now to anyone other than the most obstreperous academic and stubborn editorial page writer that insider trading of the type and nature that we have now charged dozens of times over is an insidious offense – it neither advances the market nor is it victimless nor does it fall into a hazy gray area as some suggested before they ever had a chance to see the actual allegations we made and the actual proof we collected.

Insider trading saps market confidence, cheats average investors, and victimizes the companies whose secret information is so often stolen in the scheme.

As Southern District Judge Richard Sullivan said recently upon imposing a sentence on an insider trading defendant: "I think this is a crime that does damage to the national economy and does damage that is pretty considerable, and that is the reason why the penalties are pretty high for this crime."

Here is another point about victims in these cases that sometimes gets lost in the mix. As I said, I recently visited Harvard Business School. I was asked by a professor there whether any of the people who sold or otherwise profited from revealing illegal inside information actually worked at the companies whose information they stole. I told him the answer was yes. He said, "That's outrageous! You should tell people that." I said, I do – it's in our complaints. But maybe because we don't write our complaints in the inverted pyramid style, it maybe gets lost.

Second, it seems clear also that our efforts are bound to have a substantial deterrent effect on insider trading specifically and perhaps on corporate corruption generally. I can't vouch for it, but the results are fairly astonishing: 58 percent of traders surveyed in a 2007 poll said they would trade on inside information if they knew they would not get caught. Part of our job is to increase the cost and risk of engaging in illicit conduct. We have done that.

At this point, given the track record and the publicly-known consequences for engaging in that crime, any educated, privileged, and wealthy money manager or corporate insider who today knowingly engages in insider trading is especially foolish - or pathological. And he certainly does not belong in any field where rational risk assessment is part of the job description.

Third, one point I made in the speech eight months ago was that, to my eye and in my judgment, insider trading appeared to be rampant. Now, since "rampant" is not a precise metric approved by the bureau of weights and measures, it is hard to test the accuracy of that quantitative conclusion. But the record of additional cases over the past eight months certainly does nothing to call it into question.

Perhaps more disturbing than the numerosity of cases – with almost 50 defendants charged by my office alone – is the diversity of the accused’s occupations. Charged insider trading has been not limited to any particular industry, sector, or geographical region.

Recently, we have seen substantial insider trading cases brought not only in the Southern District of New York, but also in the District of Maryland, the District of New Jersey, and the Eastern District of Virginia, among other places. Investigations have ensnared people not only at hedge funds, but also at tech companies, pharmaceutical concerns, consulting firms, law firms, government agencies, and even a major stock exchange.

And so, given the pervasive nature of the phenomenon of blatant insider trading – across so many industries and regions – the bigger and better question may not be whether insider trading is rampant, but whether corporate corruption in general is rampant; whether ethical bankruptcy is on the rise; whether corrupt business models are becoming more common. In light of recent events, these have never been more relevant questions.

Some of the most egregious securities frauds we have seen in this district alone have sadly occurred at institutions with seemingly robust compliance programs, at least on paper. They have occurred not at fly-by-night outfits, but at some of the most prominent and powerful publicly traded companies, consulting firms, accounting firms, and even law firms. And of course, also on the part of the highest-flying money managers on Wall Street.

Indeed, we keep witnessing some of the most educated, successful, and monied professionals in the country put their companies – not to mention their own liberty – at risk by engaging in flagrant and foolhardy illegal conduct in the market. Some of these people have already made more money than could ever be spent in one lifetime; and achieved more impressive success than could ever be chronicled in one obituary.

It begs the question: is corporate culture becoming increasingly corrupt? At the very least, in too many places and in too many quarters, there seems to have taken root a culture of minimalism – by that, I mean a culture of merely aspiring to the minimum: doing merely the minimum required to avoid an enforcement action or a criminal charge, rather than focusing affirmatively on doing the right thing, staying comfortably clear of the line, and earning a robust reputation for integrity and honesty.

The particular phenomenon that should worry and trouble people is the impulse to walk the line, to aspire to the bare minimum. I hope you would agree that the most powerful and privileged institutions in America should be aspiring to something more than the minimum.

Recently I have made it a point to speak to business groups, hedge fund associations, groups of compliance officers, securities lawyers, and groups of directors at Fortune 500 companies. I’ve also visited the nation’s leading business schools, including the business schools at Harvard, Wharton, Columbia, and NYU.

Why do I do this? It’s not quite my version of a scared-straight program for white collar professionals. But it is not that different from the reasons that cops and drug and gang prosecutors from time to time go into communities and neighborhoods where violent crime is a problem. Except that instead of talking about the importance of staying in school, getting a job,

and avoiding drugs and bad influences, I talk about the importance of ethics and personal integrity and corporate culture. I talk about the perils of walking the line – the line between what is legal and what is not, the line that is dangerous to get close to and criminal to cross.

And I have been struck by a question I have been asked on more than one occasion. It goes something like this: “Mr. Bharara, you’ve talked about making sure you don’t cross the line and that it is dangerous to wander too close to the line. So, exactly how far from the line do you recommend people stay?” It is asked like it is a geometry problem. I am tempted to say, oh, about 3 ½ feet should do the trick.

I guess it is not an unfair question, given what my thesis is – but I am always a bit taken aback. I answer by explaining that I disagree with the premise of the question; that the orientation of the question is unfortunate and off-base; that if you are single-mindedly focused on walking the line, you are bound to end up afoul of regulators, and God forbid, criminal prosecutors.

Even more dangerous perhaps, you are sending a message to every other person at the firm that line-walking is a good idea. That can work for a while, but people will invariably miscalculate and bad things will invariably follow.

And versions of that question likely get asked at firms every day – how close to the line can we go? Is the loophole big enough for us to be safe? Is the worst case scenario a financial penalty, and if so, shouldn’t we just take the risk on a cost-benefit analysis?

A single-minded focus on remaining an inch away from the legal line is just asking for trouble. It is a dangerous thing to walk the line – and to train others to do it. But it happens every day.

It’s like a driver constantly trying to game just how close to the legal alcohol limit he can come without getting a DUI. Now, one can do that.

- But how long do you think before that driver gets pulled over?
- How long before that driver blows the legal limit?
- And how long before that driver hurts someone on the highway?

Aspiring to the minimum is a recipe for disaster. Just like my office must be about more than obtaining convictions, financial institutions must be interested in more than just making money and maximizing profit in the short term. As I know you agree, those goals have to be reached honestly and honorably and on the right side of the law.

To be sure, corporate culture is not dispositive and is no panacea. To be sure, there are bad apples everywhere, but an apple is more likely to rot in certain climates than in others. But all of us – and particularly financial writers like you – have an interest in understanding how serious a problem the creep of corporate corruption has become.

Let me conclude by expressing my sincere appreciation to all of you and say a word to the journalism students here – as you embark on a supremely challenging profession.

I don't think anyone here knows this, but I myself was once a budding journalist in college. I was a news anchor for Harvard Radio (WHRB, 95.3 FM) – even back then I had a face for radio. I was actually anchoring on October 19, 1987, Black Monday, when the Dow dropped 22.6 percent -- more than 500 points. Having never owned a stock, we weren't sure at first about the significance of the story and whether we should lead with it. But wisely, we did.

Like lawyers, journalists have come to be much maligned in modern American society. But we win that competition; after all, Shakespeare did not write, "First, let's kill all the journalists." But I deeply believe that there is tremendous nobility in each of our professions – for the practitioner who chooses to remain true to its ideals.

The best prosecutors and the best journalists have much in common:

- While both may struggle from time to time with the temptations of hubris and self-grandeur, both in the end care deeply about accountability and justice and truth;
- both abhor hypocrisy and corruption;
- both not only preach, but practice, integrity and decency;
- both know to temper toughness with fairness;
- and both understand that their principal and overriding duty is always to the public.

I'd ask you to think about three things as you move on to the daunting challenges you face in your chosen profession. First, think about all the fun you are going to have. There has never been a better time to do this.

Second, think about the power you will have. It is a sobering thing. If you so choose, you can have the power to profoundly shape public debate and public understanding; the power to expose graft and corruption; the power to right wrongs, champion underdogs, launch careers, solve mysteries, and destroy myths.

But, third, think also about the awesome responsibility that will come with that power. Because you will also have the capacity – if you are not always careful and true to your ideals – to end careers, ruin reputations, upend investigations, harm markets, sow confusion, and distort reality.

At the end of the day, we prosecutors and journalists both will be judged on how wisely we have wielded the enormous power conferred on us; on whether we have discharged our weighty duties with professionalism, integrity, and restraint.

You know, in the end, journalism is not merely about chronicling the present and the past, but also about anticipating the future.

In a recent appearance on Jon Stewart - I think it followed the Donald Trump pizza sketch - the esteemed journalist, Bill Moyers, quoted hockey legend, Wayne Gretsky, in explaining what he thought made a journalist great: "A good hockey player plays where the puck is; a great hockey player plays where the puck is going."

In my view, that is one of the central challenges for prosecutors and journalists both – figuring out where the puck is going to be.

Good luck and maybe I'll see you on the ice.